IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.316 of 2007

Narsingrao @ Pratapsinha Dattajirao Sarnobat ...Applicant
vs.
Balasaheb Ramchandra Mohite & Anr. ...Respondents

Mr.Amit Borkar for the Applicant
Mr.P.D.Dalvi for Respondent Nos.1 and 2.

CORAM: A.S.OKA,J.
DATE : JUNE 27, 2007.

P.C.:

1. Heard Advocates for the parties. The Petitioner is the original Defendant who made an Application under clause (d) of Rule 11 of Order VII of the Code of Civil Procedure,1908. The contention of the Petitioner in the said Application was that on the basis of the statements made in the plaint, the claim in the suit appears to be barred by limitation. The said Application has been rejected by the learned Trial Judge.

2. The learned Advocate for the Petitioner has invited my attention to the averments made in the plaint. He submitted that on plain reading of the plaint and in particular paragraphs 4 and 5 thereof, it is obvious that the claim was ex-facie barred by limitation. He, therefore, submitted that the court has committed an error by rejecting the Application.

3. I have considered the submissions. Under clause (d) of Rule 11 of Order VII of the said Code, the plaint can be rejected where the suit appears from the statement in the plaint to be barred by any law. If the averments made in the plaint are read as a whole, it is very difficult to come to the conclusion that the entire claim made in the suit is

barred by limitation.

4. Perusal of the impugned order shows that the learned Trial Judge was under an impression that he was deciding a preliminary issue of limitation. At the stage of consideration of the Application made by the Petitioner, only a limited enquiry was contemplated. At this stage, only the averments made in the plaint could have been considered. Issue of limitation is a mixed question of law and fact and therefore, while deciding the Application made by the Petitioner for rejection of the plaint, the learned Trial Judge could not have finally decided the issue of limitation. The said issue will have to be decided at the appropriate stage of the suit. Though, I am inclined to confirm the impugned order to the extent to which it rejects the Application made by the Petitioner at Exh.41, it will have to be clarified that the issue of bar of limitation is expressly kept open and it will be decided at appropriate stage of the suit.

5. Hence, I pass the following order :

i) The impugned order to the extent to which it rejects the prayers the Application at Exh.41 is confirmed and the prayer made by the Petitioner for rejection of the plaint stands rejected.

ii) It is, however, made clear that the issue of bar of limitation is expressly kept open. It will be decided by the Trial Court at the appropriate stage of the suit.

iii) Revision Application is accordingly disposed of.

JUDGE